

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

TRAVIS MCCLOUD PASKEL	§	PLAINTIFF
	§	
	§	
v.	§	Civil No. 1:15cv323-HSO-JCG
	§	
	§	
RONALD WOODALL	§	DEFENDANT

**ORDER ADOPTING MAGISTRATE JUDGE'S [26] REPORT AND
RECOMMENDATION AND DISMISSING CASE WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [26] of United States Magistrate Judge John C. Gargiulo, entered in this case on November 10, 2016, and the Motion to Dismiss for Failure to Exhaust Available Administrative Remedies [23] filed by Defendant Ronald Woodall on September 29, 2016. Based upon his review of Defendant's Motion to Dismiss [23], the pleadings, and relevant legal authority, the Magistrate Judge recommended that Defendant's Motion to Dismiss [23] be granted and that this case be dismissed without prejudice for Plaintiff's failure to exhaust his available administrative remedies. R. & R. [26] at 6. For the reasons that follow, the Court finds that the Report and Recommendation [26] should be adopted in its entirety as the finding of this Court, that Defendant's Motion to Dismiss [23] should be granted, and that this case should be dismissed without prejudice.

I. BACKGROUND

Plaintiff Travis McCloud Paskel ("Plaintiff") filed a pro se Complaint [1] in this Court on September 28, 2015, asserting claims pursuant to 42 U.S.C. § 1983 against

Defendant Ronald Woodall (“Dr. Woodall” or “Defendant”). Compl. [1] at 1. In the Complaint, Plaintiff admitted that he had not completed the Administrative Remedy Program (“ARP”) regarding the claims presented in his Complaint. *Id.* at 3.

On September 29, 2016, Defendant filed a Motion to Dismiss for Failure to Exhaust Administrative Remedies [23]. Plaintiff has not responded to Defendant’s Motion to Dismiss [23]. On October 17, 2016, the Magistrate Judge entered an Order to Show Cause [24] requiring Plaintiff to file a response to the Motion to Dismiss [23] by November 7, 2016, “or otherwise show good cause why the claims against Dr. Woodall should not be dismissed.” Order [24] at 1. Plaintiff was specifically warned that “[f]ailure to comply with this Order subjects this case to dismissal without further notice to Plaintiff.” *Id.* Plaintiff did not respond to the Order to Show Cause [24].

On November 10, 2016, the Magistrate Judge entered his Report and Recommendation [26], recommending that Defendant’s Motion to Dismiss [23] be granted and that this case be dismissed without prejudice for Plaintiff’s failure to exhaust his available administrative remedies. R. & R. [26] at 6. Any objection to the Magistrate Judge’s Report and Recommendation [26] was due within fourteen (14) days of service, or no later than November 28, 2016. L.U. Civ. R. 72(a)(3). To date, Plaintiff has not filed any objection to the Magistrate Judge’s Report and Recommendation [26].

II. DISCUSSION

Where no party has objected to the Magistrate Judge’s Report and Recommendation, the Court need not conduct a *de novo* review of it. 28 U.S.C. §

636(b)(1) (“a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge’s findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. The Court will adopt the Magistrate Judge’s Report and Recommendation [26] as the opinion of this Court and will grant Defendant’s Motion to Dismiss [23]. This civil action will be dismissed without prejudice for Plaintiff’s failure to exhaust available administrative remedies.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [26] of United States Magistrate Judge John C. Gargiulo, entered on November 10, 2016, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant Ronald Woodall’s Motion to Dismiss for Failure to Exhaust Administrative Remedies [23] is **GRANTED**, and civil action is **DISMISSED WITHOUT PREJUDICE** for Plaintiff’s failure to exhaust available administrative remedies. A separate final judgment will be entered pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 23rd day of March, 2017.

s/ Halil Suleyman Ozerdan
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE